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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,546	06/18/2001	Paul Donato	20004/42-US	1399
81905	7590	09/16/2010		
Hanley, Flight & Zimmerman, LLC 150 S. Wacker Dr. Suite 2100 Chicago, IL 60606			EXAMINER SHANG, ANNAN Q	
			ART UNIT	PAPER NUMBER
			2424	
			NOTIFICATION DATE	DELIVERY MODE
			09/16/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jflight@hfzlaw.com  
mhanley@hfzlaw.com  
docketing@hfzlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/883,546	<b>Applicant(s)</b> DONATO, PAUL	
	<b>Examiner</b> ANNAN Q. SHANG	<b>Art Unit</b> 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/18/10</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 3-5,10-12,14-23,37,38,41,48,54,56-64,67-69,76-78,82-90,96,97,99-101,103-112,114,115,118-120,122,124-131 and 133-212.

Continuation of Disposition of Claims: Claims rejected are 3-5,10-12,14-23,37,38,41,48,54,56-64,67-69,76-78,82-90,96,97,99-101,103-112,114,115,118-120,122,124-131 and 133-212.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/18/10 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3-5, 10-12, 14-23, 37, 38, 41, 48, 68-69, 76-78, 82-90, 96, 97, 99-101, 105-112, 114-115, 118-120, 122 and 126-131 and 133-212 are rejected under 35 U.S.C. 102(b) as being anticipated by **Lu et al (5,550,928)**.

As to claims 194, 200, 206 and 184-212 note the **Lu** reference figures 1+, discloses method and apparatus for automatically determining and dynamically updating user preferences in an entertainment system and further discloses (A1) a method comprising...: (A2) An article of manufacture...cause a machine to...: (A3) An Apparatus comprising...: (A4)

A memory (Profile Database); A processor (System Controller "SC" 104) coupled to the memory (figs.1 and 5) and a programmed to:

Determining a count of audience members of a program being viewed, by a viewer at a display (TV receiver or Computer monitor) within a predetermined period(s) of the day, week, months, etc., (figs.1+, col.3, line 28-col.4, line 51, col.5, line 43-col.6, line 1+, col.8, lines 25-53 and col.22, line 61-col.23, line 38), note that the system determines a count of the number of user(s) not currently viewing the program being viewed by a current user and performs an action (recording, etc.,) for the user/users not currently viewing the program.

Determining a probability that an unidentified person is in the audience of the program when the count is different from a number of audience members recorded in a log of audience members for the program; selectively providing a prompt for an audience identification based on the probability (col.3, line 28-col.4, line 51, col.5, line 43-col.6, line 1+, col.8, lines 25-53 and col.22, line 61-col.23, line 38);

and further determines whether the audience member has already entered the audience member identification, adding the audience members for the program when the audience member enters the audience member identification and suppressing prompting of the audience member when the audience member has already entered the audience member identification, using the various methods.

Uploading the log of audience members to a data collection server (Remote Server), the data collection server to receive one or more logs of

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audience members from one or more additional locations (col.8, lines 12-42, col.10, line 60-col.11, line 30 and col.14, lines 25-32).

As to claim 3, Lu further discloses waiting for passage of a predetermined amount of time from a previous prompting decision, and determining a second probability that a second audience member is also in the audience of the program being at the first location (col.9, lines 43-53 and line 64-col.10, line 12).

Claim 4 is met as previously discussed with respect to claim 182.

As to claim 5, Lu further discloses prompting the audience member to enter the audience member identification upon detection that the receiver has been turned on (col.9, line 15-30, lines 43-53 and line 64-col.10, line 25).

Claim 10 is met as previously discussed with respect to claim 182.

Claim 11 is met as previously discussed with respect to claims 182.

Claim 12 is met as previously discussed with respect to claim 182.

As to claim 14-15, Lu further discloses storing audience identification data in tables, collapsing the tables if the tables contain insufficient data to make a prompting decision (col.5, line 30-col.6, line 23) and collapsing of the tables is weighted depending upon age of the audience member identification data (col.6, line 23-32 and col.10, lines 26-36).

Claim 16 is met as previously discussed with respect to claim 182.

Claims 17-23 are met as previously discussed with respect to claim 182.

William further teaches monitoring profiles and B-log data for during a predetermining time periods (col.6, lines 52-64 and col.7, lines 14-41) and further uses SIDs to identifies various classes of programs, sports, movies, drama, etc.,

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and present to each user identified EPG specific to a user's profile and B-log information (figs.7-8 and col.5, line 39-col.6, line 56 and col.7, lines 14-51).

Claims 37-38 are met as previously discussed with respect to claims 14-15.

Claim 41 is met as previously discussed with respect to claim 182.

Claim 48 is met as previously discussed with respect to claim 182.

Claim 68 is met as previously discussed with respect to claim 182.

As to claim 69, Williams further monitors tuning style, which comprises velocity or the rate of changing channels and tuning acceleration (col.7, line 63-col.8, line 11 and col.9, lines 43-63).

Claim 76 met as previously discussed with respect to claims 14-15.

Claim 77 met as previously discussed with respect to claims 182 and 69.

Claim 78 is met as previously discussed with respect to claim 69.

Claims 82-88 are met as previously discussed with respect to claims 17-23.

Claim 89 is met as previously discussed with respect to claim 3.

Claim 90 is met as previously discussed with respect to claim 5.

Claim 96 is met as previously discussed with respect to claim 182.

Claim 97 is met as previously discussed with respect to claim 5.

Claim 99 is met as previously discussed with respect to claims 7-8.

Claim 100 is met as previously discussed with respect to claim 20.

Claim 101 is met as previously discussed with respect to claim 69.

Claims 105-107 are met as previously discussed with respect to claim 69.

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Claims 108-112 are met as previously discussed with respect to claim 182.

Claim 114 is met as previously discussed with respect to claims 14-15.

Claim 115 is met as previously discussed with respect to claims 14-15.

Claim 118 is met as previously discussed with respect to claims 7-8.

Claim 119 is met as previously discussed with respect to claim 182.

Claim 120 is met as previously discussed with respect to claim 5.

Claim 122 is met as previously discussed with respect to claim 69.

Claim 125 is met as previously discussed with respect to claim 20.

Claims 126-127 are met as previously discussed with respect to claim 69.

Claims 128-131 are met as previously discussed with respect to claim 182.

Claim 133 is met as previously discussed with respect to claim 14.

Claim 134 is met as previously discussed with respect to claims 182 and 69.

Claims 135-136 are met as previously discussed as to claims 182 and 69.

Claims 137-138 are met as previously discussed with respect to claim 182.

Claims 139-141 are met as previously discussed with respect to claim 69.

Claims 142-143 are met as previously discussed with respect to claim 182.

Claim 144 is met as previously discussed with respect to claims 182 and 69.



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Claims 145-146 are met as previously discussed as to claims 182 and 69.

Claims 147-151 are met as previously discussed as to claims 182 and 16.

Claim 151 is met as previously discussed with respect to claim 69.

Claims 152-154 are met as previously discussed with respect to claim 182.

Claims 155-156 are met as previously discussed as to claims 182 and 69.

Claim 157 is met as previously discussed with respect to claim 69.

Claims 158-160 are met as previously discussed as to claims 182 and 16.

Claim 161-162 are met as previously discussed as to claims 182 and 69.

Claim 163 is met as previously discussed with respect to claim 69.

Claims 164-166 are met as previously discussed as to claims 182 and 16.

Claim 167 is met as previously discussed as to claim 182 and 69.

Claims 168-169 are met as previously discussed as to claims 182 and 69.

Claims 170-171 are met as previously discussed as to claims 182 and 16.

Claims 172-176 are met as previously discussed as to claims 182 and 16

Claims 177-181 are met as previously discussed as to claims 182 and 16.

As to claims 195-212, are met as previously discussed with respect to claims 194.

4. Claims 54, 56-64, 103-104 and 124-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lu et al (5,550,928)** in view of **Eldering et al (6,457,010)**

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As to claims 54 and 57, Lu teach the claim limitations as previously discussed with respect to claim 1, but fails to explicitly teach applying a heuristic to determine where the audience member is in an audience of the receiver.

However, in the same field of endeavor **Eldering** teachings client-server subscriber characterization system and applies a heuristic to a user (col.13, lines 3-20 and col.14, lines 6-17).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Eldering into the system of Lu to quickly determine a user's profile or B-log and configure the system to provide the specific service(s) to each user.

Claim 56 is met as previously discussed with respect to claim 7.

Claims 58-64 are met as previously discussed with respect to claims 17-23.

Claim 67 is met as previously discussed with respect to claim 14.

As to claims 103-104, Lu teach all the claimed limitations as previously discussed with respect to claim 91 above, but fail to explicitly teach the claimed limitations of claims 103-104, which is met as previously discussed with respect to claims 1 and 54-55.

As to claims 124-125, Lu teach all the claimed limitations as previously discussed with respect to claim 116 above, but fail to explicitly teach the claimed limitations of claims 124-125, which is met as previously discussed with respect to claims 1 and 54-55.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lu et al (2004/0058675) disclose coded/non-coded program audience measurement system.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-272-7355**. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC) at 866-217-9197 (toll-free)**. If you would like assistance from a **USPTO Customer Service Representative** or access to the automated information system, **call 800-786-9199 (IN USA OR CANADA) or 571-272-1000**.

**Annan Q. Shang**